

FILED BY CLERK

JUN 17 2009

COURT OF APPEALS  
DIVISION TWO

IN THE COURT OF APPEALS  
STATE OF ARIZONA  
DIVISION TWO

BETH FORD, in her official capacity as  
Pima County Treasurer,

Plaintiff/Appellee,

v.

DEMOCRATIC PARTY OF PIMA  
COUNTY, a political organization; PIMA  
COUNTY COMMITTEE OF THE  
ARIZONA LIBERTARIAN PARTY  
INC., a political organization,

Defendants/Appellants.

DEMOCRATIC PARTY OF PIMA  
COUNTY, a political organization; PIMA  
COUNTY COMMITTEE OF THE  
ARIZONA LIBERTARIAN PARTY  
INC., a political organization,

Cross-Claimants/Appellants,

v.

PIMA COUNTY, a political subdivision  
of the State of Arizona, by and through its  
Board of Supervisors and County  
Administrator; and BETH FORD, in her  
official capacity as Pima County  
Treasurer,

Cross-Defendants/Appellees.

2 CA-CV 2009-0045

DEPARTMENT B

DECISION ORDER

APPEAL FROM THE SUPERIOR COURT OF PIMA COUNTY

Cause No. C-20085016

Honorable Charles V. Harrington, Judge

GRANTED IN PART; DENIED IN PART

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¶1 Appellants, the Democratic Party of Pima County and the Pima County Committee of the Arizona Libertarian Party, Inc. (collectively, “Democratic and Libertarian parties”), appeal the trial court’s order granting appellees’, Pima County and Beth Ford (collectively, “the county”), motion to dismiss their cross-claim.

¶2 It appears, however, that the order from which these appeals have been taken is not a final order as contemplated by Rule 54(b), Ariz. R. Civ. P. The order does not contain the rule’s requisite language and there appear to be many remaining issues in the county’s underlying complaint that relate to and overlap with the cross-claim. We note in that regard the trial court specified in its order of dismissal it would not address at that time the issue whether the county should retain or destroy the ballots in its possession, an issue raised in the complaint but also implicated in the cross-claim.

¶3 Rule 25, Ariz. R. Civ. App. P., authorizes this court to impose sanctions, such as attorney fees, against an appellant if the appeal “is frivolous or taken solely for the purpose of delay.” It is within this court’s discretion whether to impose such sanctions. *See Ariz. Dep’t of Revenue v. Gen. Motors Acceptance Corp.*, 188 Ariz. 441, 446, 937 P.2d 363, 368 (App. 1996). We are hesitant to impose sanctions and do so with “great reservation.” *Ariz. Tax Research Ass’n v. Dep’t of Revenue*, 163 Ariz. 255, 258, 787 P.2d 1051, 1054 (1989), *quoting Molever v. Roush*, 152 Ariz. 367, 375, 732 P.2d 1105, 1113 (App. 1986).

¶4 The county has not persuaded this court the appeals were frivolous, brought for the purpose of delaying the proceedings below, or otherwise brought in bad faith, warranting the imposition of sanctions under Rule 25, or any other authority. That the parties disagreed before the notices of appeal were filed whether the order was appealable, does not mean the Democratic and Libertarian parties filed the notices of appeal in bad faith.

Accordingly, we grant the county's motion to dismiss the Democratic and Libertarian parties' appeals, but deny the county's request for sanctions.

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J. WILLIAM BRAMMER, JR., Judge

Judge Vásquez and Judge Espinosa concurring.